

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  WWC LICENSE LLC, d.b.a. CellularOne	DOCKET NO. 199 IAC 39.2(4)
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**ORDER GRANTING REQUEST FOR  
ELIGIBLE TELECOMMUNICATIONS CARRIER STATUS**

(Issued November 21, 2000)

On April 28, 2000, WWC License LLC, d.b.a. CellularOne (Western), filed a "Request For Universal Service Eligible Carrier Status in Iowa" pursuant to 199 IAC 39.2(4). In its request, Western stated it is a telecommunications carrier as defined in 47 U.S.C. § 153(49). Western also stated it is authorized by the Federal Communications Commission (FCC) to provide commercial mobile radio services (CMRS) under the brand name "CellularOne™" in certain parts of Iowa, as described in Attachments A through C, filed with the request. Western filed an affidavit in support of its request.

According to the affidavit, Western intends to offer its universal service package using a wireless local loop. A wireless local loop utilizes a wireless access unit at a customer's location to transmit the signal to the nearest cellular telephone system tower. Western stated the wireless local loop technology functions as a replacement for the last mile of copper wire of the incumbent local exchange carrier (LEC): "A wireless access unit is more powerful than a conventional cellular handset,

simulates dial-tone, and allows customers to plug in fax machines, answering machines, or other peripheral devices." (Affidavit at p. 7.)

In its application, Western briefly addressed the eligibility items listed in 199 IAC 39.2(1), asserting that its proposed offering will satisfy each of the nine requirements of that rule. The application also states that for a fixed monthly charge, Western will offer consumers the core services supported by universal service mechanisms with unlimited local usage, a local calling area larger than that offered by the incumbent LEC, a per minute charge for long distance calls, and optional features and services such as voice mail, caller-ID, call waiting, call forwarding, and conference calling.

On May 18, 2000, U S WEST Communications, Inc., now known as Qwest Corporation (Qwest), filed a petition to intervene and asked the Utilities Board (Board) to docket Western's request to resolve certain questions and issues. In support of its petition, Qwest stated that it has more than one million access lines in Iowa. Qwest also stated it "has a vital interest in the Western application because of the impact of eligible carrier funds upon the price of exchange lines in Iowa." (Petition at p. 1.)

Qwest described Western's application as nothing more than vague statements that afford no basis for determining whether the application should be granted. Qwest requested a hearing to allow the Board to determine if Western's prices and terms and conditions would be harmful to Iowa users when compared to the rates and services offered by incumbent LECs.

Qwest described Western's proposed service area as unclear and argued a hearing would allow Western to explain the coverage issue. Qwest also argued Western is silent as to whether it would agree to serve all customers within the service area as a carrier of last resort if another eligible telecommunications carrier relinquishes its eligible carrier status.

Finally, Qwest stated that the concerns it listed in its petition were only illustrative, but not exhaustive, of the issues raised by the request.

On June 2, 2000, Western filed a response to Qwest's petition to intervene. Western asserted it "has clearly shown how it meets each requirement described in 47 U.S.C. § 214(e) and 199 I.A.C. ch. 39." Specifically, Western argued it is not required to specify the rates, terms, and conditions that will apply to its proposed universal service offering and that competition can be relied upon to ensure service is provided in a just and reasonable manner.

Western also argued it should not be required to specify its local calling areas because "the marketplace will determine whether customers find Western' calling areas to be beneficial." Western further argued its proposed service areas are sufficiently clear, in that Western seeks designation in the study areas of rural LECs and in specified wire centers of Qwest, as provided by 47 U.S.C. § 214(e)(5), 47 C.F.R. § 54.201.10, and 199 IAC 39.2(5). Finally, Western asserted it has facilities currently in place to fulfill its universal service offerings.

On June 14, 2000, the Iowa Telecommunications Association (ITA) filed a petition to intervene. ITA is a trade association representing all of the incumbent

telephone utilities in Iowa providing local landline telephone service. ITA noted the Western application is the first request of a wireless carrier for ETC status in Iowa. ITA argued that the Board's rules appear to provide that a carrier can only be designated as an ETC if it provides the required services, but the affidavit provided by Western in support of its request is unclear as to whether the required services are actually being offered or are only contemplated to be offered. ITA argued that, since there are factual issues to be clarified, the Western request should be docketed for review and hearing.

Finally, on June 16, 2000, Qwest filed a reply to the response of Western, expanding on the statements in the Qwest petition.

In an order issued June 21, 2000, the Board found that Qwest and ITA had made allegations that required the Board hold a hearing in this matter. The Board docketed Western's request, granted intervention to Qwest and ITA, and established a procedural schedule. Subsequently, the Board granted intervention to McLeodUSA Telecommunications Services, Inc. (McLeod), and the Iowa Association of Municipal Utilities (IAMU). The parties prefiled direct testimony and a hearing for cross-examination of the prefiled testimony was held on September 18, 2000. Initial briefs were filed on September 25, 2000, and reply briefs on October 4, 2000.

Based upon the evidence received and the briefs filed, it appears there are two issues for the Board to decide: First, whether Western meets the requirements for designation as an eligible telecommunications carrier in Iowa and second,

whether the Board should impose other requirements on Western as a condition of that status.

## ISSUES

### I. DOES WESTERN MEET THE REQUIREMENTS FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER?

Western's application and its supporting testimony make it clear that Western's proposed service offering satisfies the requirements for designation as an ETC. In fact, no party has seriously contested Western's case in this respect. For example, the Qwest witness stated she was not offering any evidence regarding Western's ability to provide any of the supported services to customers using the wireless access unit. (Tr. 233-34.) Instead, Qwest was only offering additional criteria that Qwest believes the Board should examine. (Id.)

The supported services criteria are listed in 199 IAC 39.2(1). Western's response to each of these criteria can be summarized as follows:

#### a. Voice Grade access to the public switched network.

This is a functionality that enables a customer to both transmit and receive voice communications<sup>1</sup>. For purposes of defining universal service, voice grade access occurs within the frequency range 500 to 4,000 Hertz (i.e., a bandwidth of 3,500 Hertz).

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<sup>1</sup> This includes signaling the network that the caller wishes to place a call, and receiving a signal indicating there is an incoming call.

**Western's Response.** Western states that it meets the FCC's and the Board's requirements for voice grade access to the public switched telephone network. Western asserts that "[t]hrough its interconnection arrangements with local telephone companies, including Qwest, all Iowa customers of Western are able to make and receive calls on the public switched network within both the Board's and the FCC's specified bandwidth." (Tr. 21-22.)

**b. Local usage.**

An ETC offering must include a minimum amount of local exchange service, defined in usage minutes, provided to customers free of additional charge. The minimum amount is to be prescribed by the FCC, which has not yet ruled on this issue.

**Western's Response.** The FCC has not yet quantified a minimum amount of local usage required to be included in a universal service offering, but has initiated a separate rule making proceeding to address this issue.<sup>2</sup> Any minimum local usage requirements established by the FCC as a result of that rule making would be applicable to all designated ETCs. Western states it will comply with any and all minimum local usage requirements adopted by the FCC. In the meantime, Western proposes to meet the local usage requirement by including local usage in its universal service offerings. Western adds that it will offer unlimited local usage in one of its universal service offerings. (Tr. 22.)

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<sup>2</sup> FCC-98-278, October 26, 1998.

**c. Dual tone multifrequency signaling or its functional equivalent.**

Dual tone multifrequency (DTMF) signaling, a/k/a “touchtone,” is a method of signaling that facilitates the transportation of signaling through the network, shortening call setup time.

**Western’s Response.** Western states it will be using out-of-band signaling and in-band multi-frequency signaling, which are functionally equivalent to DTMF required by 199 IAC 32.2(1)"c" and 47 C.F.R. § 54.101(a)(3). (Tr. 22-23.)

**d. Single-party service or its functional equivalent.**

The Board’s ETC criteria require that customers have exclusive use of a wireline subscriber loop or access line for each call placed. In the case of wireless carriers, which use spectrum shared among users to provide service, this means a dedicated message path for the length of a customer’s particular transmission.

**Western’s Response.** Western states that it meets the requirement of single-party service by providing a dedicated message path for the length of all customer calls. (Tr. 23.)

**e. Access to emergency services.**

ETC service must include access to services such as 911 and Enhanced 911 (E911) provided by local governments or other public safety organizations. Standard 911 permits a customer to call emergency services by dialing the three-digit code “911.” The call is routed through a Public Service Access Point (PSAP) operated by local government. E911 is the same as 911, except that it also includes automatic numbering information (ANI) that enables the PSAP to call back if the call is

disconnected and automatic location information (ALI) that permits identification of the calling party's geographic location. Access to 911 or E911 ultimately depends on local government implementation of 911 or E911 systems.

**Western's Response.** Western states that it currently provides customer access to 911 emergency services and stands ready to provide wireless E911 once PSAPs in Iowa have E911 systems in place. Rollout of wireless E911 service in Iowa is anticipated for the fall of 2000. Western states it will work with PSAPs within its designated universal service areas to make E911 service available to customers as soon as possible and in accordance with the Iowa wireless E911 implementation plan. Western has committed to provide E911 service to its customers once a PSAP has the ability to receive ANI and ALI and request it from Western. (Tr. 23.)

**f. Access to operator services.**

The Board's rules require that ETC service include customer access to automatic or live assistance that arranges for billing and/or completion of a telephone call.

**Western's Response.** Western states it will provide access to operator services operated by Western or other entities such as LECs or interexchange carriers (IXCs). (Tr. 24.)

**g. Access to interexchange services.**

ETC service must include use of the local loop and that portion of the switch paid for by the end user (or, in the case of a wireless carrier, the functional equivalent of these network elements), as necessary to access an IXC network.



**Western's Response.** Western states it will provide access to interexchange services through arrangements with several IXCs. Customers will also be able to reach their IXC of choice by dialing the appropriate access code. Western notes that the FCC does not require "equal access to interexchange service among services supported by universal service mechanisms."<sup>3</sup> (Tr. 24.)

**h. Access to directory assistance.**

ETC service must include access to a service that makes directory listing information available to customers upon request.

**Western's Response.** Western states that white pages directories and listings are not required service offerings.<sup>4</sup> Western states it will provide customers with access to directory assistance by dialing "411" or "555-1212." (Tr. 24.)

**i. Toll limitation for qualifying low-income consumers.**

This includes toll blocking or toll control for qualifying low-income customers.

**Western's Response.** Western notes that the FCC no longer requires both toll blocking and toll limitation and that the Board has recognized this change.<sup>5</sup> Western states it will provide toll blocking for qualified low-income customers. Western currently has no Lifeline customers because only ETCs can participate in Lifeline.<sup>6</sup> Western states that it currently offers non-Lifeline toll blocking and, once designated an ETC, will participate in Lifeline, Link Up, and Tel-Assistance as

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<sup>3</sup> FCC Universal Service Order, ¶ 78.

<sup>4</sup> FCC Universal Service Order, ¶¶ 80-81.

<sup>5</sup> Re: FiberComm L.C., Docket No. 199 IAC 39.2, "Order Designating Eligible Telecommunications Status" (issued July 30, 1999).

<sup>6</sup> 47 C.F.R. § 54.400-415.

required and provide associated toll blocking in satisfaction of federal and state requirements. (Tr. 25.)

The Board finds that Western has made a sufficient showing to establish that it meets each of the criteria of 199 IAC 39.1. No party to this proceeding has raised serious questions regarding Western's showing. Accordingly, the Board finds that Western has met the requirements of the Board's rules for ETC status.

## **II. SHOULD OTHER REQUIREMENTS BE APPLIED TO WESTERN?**

This leaves the question of whether other requirements should be applied to Western as a condition of receiving ETC status in Iowa. The parties have approached this question as one of "regulatory parity" or "competitive neutrality." (Tr. 81-83.) To date, all of the ETCs in Iowa either had a certificate of public convenience and necessity issued pursuant to Iowa Code § 476.29 (1999) or had applied for such a certificate. The certification process provides the Board with important information about local exchange service providers and their operations in Iowa, information the Board uses in fulfilling some of the duties assigned to the Board by statute. For example, prior to issuance of a certificate the Board must find that a service provider has the technical, managerial, and financial capability to provide the proposed service. Clearly, it is in the public interest that this examination be made before new entrants begin to provide service in Iowa.

Similarly, in conjunction with issuance of the certificate, the service provider must file with the Board a map of its service territory and a tariff specifying the exchange or exchanges served and the terms and conditions of the company's

proposed service. Further, § 476.101 requires that certificated local exchange service providers must comply with a number of other requirements, including provisions relating to adequacy of service, interconnection with other carriers, disconnection of customers, civil penalties, and customer complaints. These requirements permit the Board to fulfill its duties under Iowa Code chapter 476, including but not limited to its duties to assure that all territory in Iowa is served by a local exchange utility (§ 476.29(11)), to resolve customer complaints (§ 476.3), to ensure utilities furnish reasonably adequate service and facilities (§ 476.8), and to resolve interconnection complaints (§ 476.11).

Western appears to believe it is exempt from the requirement that it obtain a certificate. In its request for universal service ETC status in Iowa, Western checked the blank indicating it is not currently approved to provide local service in Iowa. Since the request was filed, Western has not sought a certificate from the Board and has not indicated that it has any plans to seek such a certificate.<sup>7</sup> Consistent with the issues litigated in this docket, the Board will assume that Western is not required to obtain a certificate pursuant to § 476.29 for its proposed wireless local loop offering;

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<sup>7</sup> It is possible that Western considers its proposed ETC offering to be exempt from state entry and rate regulation pursuant to 47 U.S.C. § 332(c)(3)(A). This assumes the service is “commercial mobile service” as defined in the Federal Communications Act, a question that has not been thoroughly explored in this docket. At hearing, Western offered to brief this question (Tr. 171), but did not, and none of the other parties have briefed it. However, it is possible to resolve the issues in this docket without addressing preemption questions, because (as will be discussed below) the Board is not contemplating entry or rate regulation as a part of its action in this docket. Thus, the Board need not, and will not, decide in this proceeding whether Western’s proposed wireless local loop offering is “commercial mobile service” such that the Board is preempted from entry or rate regulation.

this leaves the question of whether some other mechanism is available to the Board to assure that public interest concerns in the local exchange market are satisfied.

During the hearing in this docket, Western made certain commitments intended to address some of these concerns. Western has already filed a map of its proposed ETC service territory (see Attachment B to its request; see also Tr. 61); while the map does not conform to the Board's rules regarding service territory maps (199 IAC 22.20(3)), it appears to be minimally adequate for the Board's immediate requirements and can presumably be supplemented if necessary.

Western also made a commitment to install additional cell towers in the proposed service territory if necessary to "get good signal coverage and service to every customer in the service area." (Tr. 68.)

Western offered to file its customer service agreement with the Board on an advisory or informational basis. (Tr. 72, 77.) In Minnesota, Western filed both the customer service agreement and a tariff describing the services, rates, and local calling areas (Tr. 176); it is not clear that Western has offered the same in Iowa, but the Board has no doubt that Western will make such a filing if necessary.

At the hearing, Western also made a commitment that the Board can investigate and review customer complaints least with respect to its ETC offering and take action with respect to the ETC requirements. (Tr. 78, 116, 138-39.) Western noted that it would maintain internal performance records regarding customer service quality and complaints (Tr. 153) and that "the general concept of quality [is an issue]

that the Board will have the authority to review.” (Tr. 140.) Finally, Western stated that it would comply with any lawful condition imposed by the Board. (Tr. 80.)

The Board believes these voluntary commitments by Western will be adequate to assure that public interest concerns will be satisfied. The Board will be informed of Western’s ETC service territory; the Board will be able to resolve complaints regarding Western’s service quality; and the Board will be able to impose other lawful conditions as necessary. The Board is expressly relying upon these commitments in issuing this decision; without these commitments from Western, the Board would have to identify some other mechanism that would permit the Board to protect the public interest.

### **ORDERING CLAUSE**

#### **IT IS THEREFORE ORDERED:**

The request for universal service eligible carrier status filed by WWC License LLC, d.b.a. CellularOne, on April 28, 2000, is granted, subject to the voluntary commitments made by Western and described in the body of this order.

### **UTILITIES BOARD**

/s/ Allan T. Thoms

/s/ Diane Munns

**CONCURRING OPINION OF BOARD MEMBER SUSAN J. FRYE**

I concur in the result reached by my colleagues with respect to Western's request for ETC status. Western has filed evidence that is sufficient to satisfy the requirements of 199 IAC 39.(2) and the request should be, and is, properly granted.

I also concur with my colleagues in their belief that the commitments Western has made with respect to filings and submission to the Board's jurisdiction appear to be minimally sufficient to permit the Board to protect the public interest in the local exchange market pursuant to Iowa Code chapter 476. I am writing separately to explain my belief that Iowa Code §§ 476.29 and 476.101 require that Western's wireless local loop service offering be made subject to Board jurisdiction, regardless of whether Western has applied for or received ETC status, because it will be an offering of local exchange services.

Iowa Code § 476.101 provides that "competitive local exchange service providers" (CLESPs) (a class which is defined in § 476.96(3) to mean any person providing local exchange services, with certain exceptions not relevant here) must do the following:

1. Obtain a certificate pursuant to § 476.29.
2. Notify affected customers of rate increases.
3. File tariffs.
4. File reports and information and pay assessments pursuant to specified sections.

5. Be subject to the Board's jurisdiction with respect to adequacy of service, interconnection, discontinuation of service, civil penalties, and complaints.

I believe that the language of § 476.101 makes it clear that Western is a CLESP and must comply with all of these requirements, and I would require compliance at this time.

Each of these requirements is closely tied to the public interest. The certificate requirement in §476.29 gives the Board notice and basic information regarding new entrants in the local exchange service market, including critical information regarding the entrant's proposed service territory. This information will be necessary for the Board's report to the General Assembly, due January 20, 2000, concerning the availability of local exchange service in all parts of Iowa, see § 476.29(15). Section 476.29 also requires that a local exchange utility serve all eligible customers within its service territory (see § 476.29(5)), a requirement that may be necessary to prevent some carriers from engaging in unreasonable discrimination among customers. Each of these requirements advances the important public interest in continuing universal service in the increasingly competitive local exchange marketplace.

The other requirements of § 476.101 are also tied to important public interests. The requirement for customer notification of rate increases confers a clear and important benefit on customers. The requirements that CLESPs file tariffs and reports ensure the Board and the public have information regarding the rates, terms,

and conditions of a new entrant's service offerings. The requirement that each CLESP must be subject to the Board's jurisdiction with respect to adequacy of service, interconnection, disconnection, civil penalties, and complaints clearly confers numerous benefits on the public relating to service quality.

These requirements are not onerous; dozens of competitive local exchange carriers have been approved for issuance of a certificate and are offering, or preparing to offer, local exchange service in compliance with these requirements. This simple process serves the public interest in a consistent, standardized manner that, at this time, is the only mandatory mechanism available to the Board. Application of this standard in this case and others would ensure consistent treatment for future applicants; granting ETC status to CLESPs on a case-by-case basis, without a uniform certificate requirement, runs the risk of inconsistent application in the future. Finally, I do not believe application of any of these requirements to Western would be preempted by the federal law regarding CMRS.

However, Western's voluntary commitments fulfill most of these requirements, if not all of them. Further, as I understand the Board's decision, the Board is not deciding with this order that these requirements can never be imposed upon Western (or other wireless local loop offerings). Instead, the Board is finding that it is not necessary, based on the record in this case, to decide whether these requirements apply to Western's wireless local loop service. This leaves the door open to future Board action, and I would support a rule making proceeding to consider and address all of these issues and create a minimal process that will protect the public interests



in a fair, reasonable, and consistent manner, regardless of the technology used.

With that understanding, I concur in the Board decision.

ATTEST: /s/ Susan J. Frye

/s/ Raymond K. Vawter, Jr.  
Executive Secretary

Dated at Des Moines, Iowa, this 21<sup>st</sup> day of November, 2000.